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IN THE

Supreme Court of the United States

OCTOBER TERM, 1960

No. 213

JOHN N. STICE, *Petitioner*,

v.

STATE OF KANSAS, *ex rel.*, JOHN ANDERSON, JR., *Respondent*.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF THE STATE OF KANSAS

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John N. Stice prays that a writ of certiorari issue to review the judgment of the Supreme Court of the State of Kansas entered in the above entitled case on January 23, 1960.

CITATIONS TO OPINION BELOW

The opinion of the Supreme Court of Kansas is officially reported in 186 Kan. 69, and is unofficially reported in 348 P. 2d 833. The opinion is reprinted in Appendix A hereto, *infra*, pp. 1a to 7a.

JURISDICTION

The judgment of the Supreme Court of Kansas was entered on January 23, 1960. [R., p. 38] A petition for rehearing was filed January 27, 1960. [R., p. 47] This was denied on March 9, 1960. [R., p. 48] On June 7, 1960, the time for filing this petition for certiorari was, by order of Mr. Justice Whittaker, extended to and including July 5, 1960. In his answer to the petition for a writ of quo warranto, petitioner expressly claimed that the issuance of the writ would constitute a violation of rights guaranteed to him by the Fourteenth Amendment to the Constitution of the United States. [R., p. 24] The jurisdiction of this Court is invoked under 28 U.S.C. § 1257(3).

QUESTIONS PRESENTED

1. Whether, in light of the fact that the people of the State of Kansas have established impeachment as the mode of removing officers of the state, and the legislature has provided ouster proceedings only for willful misconduct during the term of office, a judgment purporting to oust a duly elected and qualified state judge on the ground that by disbarring such judge for matters occurring before his election, the court has ended his qualification to hold office, violates the due process clause of the Fourteenth Amendment to the Constitution of the United States?

2. Whether, the attempted ouster of a duly elected and qualified judge by disbarring him as a lawyer, and then asserting that his disbarment deprives him of necessary qualifications for holding office, violates the equal protection clause of the Fourteenth Amendment of the Constitution of the United States, when all other persons holding judicial office may be removed only by

impeachment, or for misconduct actually occurring while in office?

STATUTES INVOLVED

Constitution of Kansas, Article 2, §§ 27, 28:

> § 27. The house of representatives shall have the sole power of impeachment. All impeachments shall be tried by the senate; and when sitting for that purpose, the senators shall take an oath to do justice according to the law and the evidence. No person shall be convicted without the concurrence of two-thirds of the senators elected.
>
> § 28. The governor and all other officers under this constitution, shall be subject to impeachment for any misdemeanor in office; but judgment in all such cases shall not be extended further than to removal from office and disqualification to hold any office or profit, honor or trust under this constitution; but the party, whether acquitted or convicted, shall be liable to indictment, trial, judgment and punishment, according to law.

Constitution of Kansas, Article 3, § 15:

> Justices of the supreme court and judges of the district courts may be removed from office by resolution of both houses, if two-thirds of the members of each house concur. But no such removal shall be made except upon complaint, the substance of which shall be entered upon the journal, nor until the party charged shall have had notice and opportunity to be heard.

General Statutes of Kansas, 1949, 1957 Supplement, Chapter 20, Article 20, § 20-2001:

> In every township in this state located in a county having a population of not less than two hundred and twenty thousand (220,000) and which said

township now has a city court, said court shall hereinafter be called the court of common pleas, and said court shall have three (3) judges and three (3) divisions of such court, which shall be known as division one (1) and division two (2) and division three (3). Each such judge shall at the time of election be a qualified voter of the county in which such township is located and admitted to practice law before the supreme court of Kansas, and shall have been a practicing attorney for a period of at least five (5) years prior to said election or appointment. . . .

General Statutes of Kansas, 1949, 1957 Supplement, Chapter 20, Article 20, § 20-2024:

The term of office of the judges of said court shall be for four (4) years and they shall hold their respective offices until their successors are elected and duly qualified: *Provided*, The term of office for the judges of said court elected in the 1954 general election shall expire on the second Monday in January, 1957. Terms of office of clerk and marshal of said court shall be for two (2) years and they shall hold their respective offices until their successors are elected and qualified. The judges, clerk and marshal shall be elected at the regular elections held for county officers of Sedgwick county and shall be elected by the voters qualified to vote for county officers at said elections. The term of office of the judges, clerk and marshall of said court elected at such election shall commence on the second Monday of January following such election.

General Statutes of Kansas, 1949, Chapter 21, Article 8, § 21-813:

Every officer who shall be convicted of any official misdemeanor or misconduct in office, or who shall

> be convicted of any offense which by this or any other statute is punishable by disqualification to hold office, shall, in addition to the other punishments prescribed for such offenses, forfeit his office.

General Statutes of Kansas, Chapter 60, Article 16, § 60-1609:

> Every person holding any office of trust or profit, under and by virtue of any of the laws of the state of Kansas, either state, district, county, township or city office, who shall willfully misconduct himself in office, or who shall willfully neglect to perform any duty enjoined upon such officer by any of the laws of the state of Kansas, or who shall in any public place within or without the state be in a state of intoxication produced by strong drink voluntarily taken, or who shall engage in any form of gambling, or who shall commit any act constituting a violation of any penal statute involving moral turpitude, shall forfeit his office and shall be ousted from such office in the manner hereinafter provided.

STATEMENT

This petition seeks to review a judgment of the Supreme Court of Kansas which purported to oust John N. Stice from the office of Judge of the Court of Common Pleas of Sedgwick County, Kansas. The decision was based upon the pleadings.

The original petition in quo warranto was filed in the Supreme Court of Kansas by John Anderson, Jr., Attorney General of Kansas. The petition alleged that John N. Stice purported to exercise the powers of a judge of the court of common pleas, [R., p. 1] and that on May 16, 1959, he had been disbarred from the prac-

tice of law in Kansas. [R., p. 1]. The essential allegation of the petition is as follows:

> That the said John N. Stice notwithstanding such disbarment continues to unlawfully hold and exercise the office of Judge of the Court of Common Pleas at Wichita, Sedgwick County, Kansas, the holding and exercise of which office requires that he be admitted to practice law before this Court, and that unless ousted therefrom by this Court, he will continue unlawfully to hold and exercise the powers of said office. [R., pp. 1, 2]

The answer filed by the petitioner admitted that he was acting as the judge of the court and that an opinion was filed May 16, 1959, purporting to disbar him from the practice of law in Kansas. [R p. 13] The answer then states:

> . . . [petitioner] was duly elected to the office of Judge of the Court of Common Pleas, Sedgwick County, Kansas, at a regular general election and that he duly qualified as said Judge and is now the duly elected, and qualified Judge of Division No. 3 of the Court of Common Pleas, Sedgwick County, Kansas, having qualified on the 14th day of January, 1957. That this defendant at the time of his election as above alleged was a qualified voter of Sedgwick County and admitted to practice law before the Supreme Court of Kansas and had been a practicing attorney for a period of at least five (5) years prior to said election, . . . [R., p. 23]

The petitioner further alleged that his term of office had not expired and that he is entitled to retain the office for the term of four years provided by the statute. [R., p. 24] He then stated

> By way of further answer, this defendant alleges and states that he has a personal and property

interest in his office of Judge of the Court of Common Pleas, Sedgwick County, and that plaintiff's Petition in Quo Warranto has no basis in law or equity and invades the personal and property rights of this defendant, without due process of law, and invades the protection of this defendant's personal and property rights under the Constitution of the State of Kansas and of the United States of America, and if said petition is granted by this court it would result in the taking away from this defendant a valuable property right without a right to be heard on the merits in this action and without due process of law.

Defendant for further answer alleges and states that he has occupied said office as Judge of said Court to which he was elected and has carried out all of his official duties as Judge with honor, fairness and judicial judgment since the date he qualified, which was the 14th day of January, 1957. That no complaints have been made against this defendant in his judicial office and that the administration of justice has been in no way inhibited. [R., p. 24]

The Attorney General thereupon filed a motion for judgment on the pleadings, based on the ground that the answer failed to raise any material issue of fact. [R., p. 27]

The Supreme Court of Kansas sustained the motion for judgment on the pleadings, and entered a judgment ousting the defendant from the office. It concluded (*infra*, p. 7a) that "the defendant was disqualified by his disbarment to hold the particular judgeship here being considered because the requirement that he be admitted to practice of law under G.S. 1957 Supp. 20-2001 was a continuing one at the time of his election and qualifying therefor and continued throughout the term for which he was elected."

REASON FOR GRANTING THE WRIT

I. The judgment of the Supreme Court of Kansas denied petitioner procedural protections granted by the people of Kansas to all other officers against whom ouster proceedings are instituted, and, for that reason, violated both the due process and the equal protection clause of the Fourteenth Amendment

The judgment which the petitioner here seeks to review infringes the protection afforded by the Fourteenth Amendment to the Constitution by denying petitioner due process and equal protection of the law. And indispensable pre-requisite to due process of law is the existence of a competent tribunal. Yet, in the circumstances of the present case, the judgment was not that of a competent tribunal, because the people of Kansas have not authorized their courts to remove officers, but have reserved that power to themselves and to the legislature. The people of Kansas have prescribed particular forms for proceedings for the removal of officers, and these forms are clearly "due process" so long as they are fair to the officer. Cf., *Simms* v. *Slacum*, 3 Cranch, 300, 302; *Walker* v. *Sauvinet*, 92 U.S. 90, 93. This Court has established repeatedly the fundamental rule that there can be no invidious distinction, and that protections afforded to one person must be made available to all. Cf. e.g. *Doud* v. *United States ex rel. Cook*, 333 U.S. 206, 208, *Cole* v. *Arkansas*, 333 U.S. 196, 201; *Cochran* v. *Kansas*, 316 U.S. 255, 257; *Frank* v. *Mangum*, 237 U.S. 309; 327; *Griffin* v. *Illinois*, 351 U.S. 12, 18. These decisions, by invalidating various discriminations against particular persons, make it abundantly clear that any invidious distinction violates both the due process clause and the equal protection clause. The decision of the Supreme Court of Kansas distinguishes the petitioner from all other holders of public office in Kansas, and denies him

rights which have been afforded to others throughout the history of the state.

The people of Kansas, in creating a system of government under their constitution, have provided for the establishment of a supreme court, district courts, probate courts, justices of the peace, and such other courts, inferior to the supreme court, as may be provided by law. *Constitution of Kansas*, Article 3, § 1. The judges of all courts specifically named in the Constitution are required to be elected by popular vote. In establishing other inferior courts, the legislature has invariably provided for the popular election of judges. Judges, as is true of all other officers, are subject to impeachment. *Constitution of Kansas*, Article 2, §§ 27, 28. Judges of the supreme court and district judges may also be removed by a concurrent resolution of both houses of the Kansas legislature, after notice and opportunity to be heard. *Constitution of Kansas*, Article 3, § 15. Such judges can be removed only by impeachment or concurrent resolution. *Fallon v. Clark*, 61 Kan. 121, 58 P. 990.

Other elected officers of Kansas may be removed by impeachment or by judicial proceedings in cases of willful misconduct while in office. *General Statutes of Kansas*, 1949, Chapter 21; Article 8, § 21-813; Chapter 60, Article 16, § 16-1609. But the power of the courts to remove officers is extremely limited. Before the court can order an ouster, it must be established that there have been acts or omissions justifying that action. The court has no power to create a forfeiture, and no power to declare a forfeiture where none already exists. *State v. Wilson*, 30 Kan. 661, 667, 2 P. 828. The court said (30 Kan. at p. 660)

> From this it will clearly appear that the two kinds of action [quo warranto and criminal prosecution]

> should not be confounded, and one used in place of the other. If the state does not choose to prosecute the defendant criminally, it waives the forfeiture, and the incumbent continues to hold the office rightfully. And forfeitures for unimportant official wrongs are often waived. But even where the wrongs are of such magnitude that the state does not choose to waive the forfeiture for them, but prosecutes the defendant for them, still his office is not in fact forfeited unless the jury trying the case can be convinced beyond a reasonable doubt that the defendant is guilty.

It is also settled law in Kansas that the legislature has authorized the removal of an officer by the courts only for misconduct during his term of office. *State* v. *Millhaubt*, 144 Kan. 574, 586, 61 P. 2d 1386; cf. *State* v. *Hurley*, 116 Kan. 395, 226 P. 709. The undisputed fact in this case is that the disbarment was not based on any misconduct of Stice in his office. On the other hand, the conduct charged against him, while prior to his election as judge, was clearly a crime, if he had in fact done what was charged.[1]

For the Supreme Court of Kansas to assert that it may remove an officer for an alleged disqualification when the people have themselves passed upon those

[1] Petitioner has consistently asserted that if the Attorney General really believes Stice committed the acts charged, a criminal prosecution should be instituted. The prosecuting officials have been just as consistent in their refusal to charge Stice criminally. This is undoubtedly the result of the recognition of both that it is highly unlikely that any jury would convict Stice on the repeatedly recanted testimony of felons serving terms in Kansas prisons. This is, we believe, especially so in view of the admission of the Kansas court (*In re Stice*, 184 Kan 589, 339 P 2d 29) that the disbarment of Stice was largely supported by a consideration of that part of the testimony of these convicts which was taken *ex parte* by the Attorney General. Stice was not even permitted to see a transcript of this testimony. Cf. *Greene* v. *McElroy*, 360 US 474, 496, 497

qualifications by electing Stice to the office is a basic disregard of the people's determination to vest the removal power in the legislature. Since the action of the court was wholly unauthorized, it was necessarily arbitrary, and it is the fundamental purpose of the Fourteenth Amendment to protect against arbitrary and discriminatory action. Nor is this usurpation mitigated by the assertion (*infra*, p. 3a) that had the disbarment occurred before the election, Stice could not have been a candidate. That one who has been selected for an office by the vote of the qualified electors has rights superior to those of one who merely seeks an office neither warrants discussion nor requires the citation of authority.

The Supreme Court of Kansas asserted that the statute creating the court of common pleas should be interpreted as requiring a judge to continue to be a member of the bar, notwithstanding the express language that these qualifications are required at the time of his election. Were it true that the court was merely interpreting a local statute, no ground for review by this Court would exist. But it is the long established practice of this Court to determine for itself issues of fact and construction when constitutional questions are involved. See, e.g. *Kern-Limerick, Inc.* v. *Scurlock*, 347 U.S. 110, 121, and cases there cited.

Nor can the direct and personal interest which Stice has in the retention of the position to which he was elected be challenged. No matter by what terminology his personal interest in completing his term is called, the Fourteenth Amendment protects him against its loss for an invalid reason. Cf. *Schware* v. *Board of Bar Examiners*, 353 U.S. 232, 239; *Wieman* v. *Updegraff*, 344 U.S. 183, 191, 192; *Slochower* v. *Board of Education*, 350 U.S. 551, 559.

The judgment challenged in this case was entered by a Court which had no power to enter it under the distribution of governmental power adopted by the people of Kansas. The court's attempted construction of the statute is so patently erroneous that it can not stand. The result is that Stice has been deprived of this judicial office by a proceeding which has denied him the protections provided by the people of Kansas, and which the court below has uniformly granted to all others whose ouster from office has been sought. That this arbitrary discrimination violates both the due process and equal protection clauses can not seriously be doubted, in the light of the fundamental principles which have guided this Court in the enforcement of the Fourteenth Amendment.

CONCLUSION

For the foregoing reason, we respectfully submit that the violation of the Fourteenth Amendment by the Supreme Court of Kansas presents a substantial question of importance in the preservation of the rights guaranteed by the Constitution of the United States. The writ of certiorari should issue and the judgment of the Supreme Court of Kansas should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX A

Opinion and Judgment of the Supreme Court of Kansas

Robb, J.: This is an original proceeding in quo warranto commenced by plaintiff seeking the ouster and removal of defendant from the office of judge of division No. 3 of the court of common pleas of Wichita, Sedgewick County.

Pertinent portions of the petition filed May 16, 1959, allege that defendant presently purports to occupy and exercise the powers of the office of judge as above stated; that on May 16, 1959, pursuant to opinion and order of this court, defendant was disbarred from the practice of law in all courts of this state and his name stricken from the roll of attorneys; notwithstanding this, defendant continues unlawfully to hold and exercise the office of such judge, which office requires that he be admitted to practice law before this court and unless ousted he will continue unlawfully to hold and exercise the powers of such office. Plaintiff has no adequate remedy at law.

In his answer filed on June 24, 1959, defendant makes a general denial except for such allegations as are specifically admitted therein. Defendant admits his election to and qualifying for the particular judgeship in question on January 14, 1957, and that he continued as such to June 24, 1959; that at the time of his election defendant was a qualified voter of Sedgwick country and had been admitted to practice law before the supreme court and had so practiced for at least five years prior to his election (G.S. 1957 Supp. 20-2001); defendant admits his disbarment but expresses an intention to appeal the order to the Supreme Court of the United States by a "bill" of certiorari; he alleges that, as provided by G.S. 1957 Supp. 20-2024, his term of office as judge is for four years, it has not expired, and he is to hold office until his successor is elected and duly qualified; defendant claims he has a personal and property interest in the office; that plaintiff's petition has

no basis in law or equity and invades defendant's personal and property rights without due process; it denies defendant equal protection of such rights under the constitutions of the United States and the state of Kansas. If the petition be granted defendant will lose a valuable property right without a hearing on the merits and without due process of law.

Defendant further alleges that since January 14, 1957, he has carried out the duties of his office with honor, fairness, and judicial judgment; that no just cause exists or is alleged in the petition to warrant defendant's ouster; the petition does not state a cause of action in quo warranto and is contrary to the law of the state of Kansas providing for removal of an elected official and especially of defendant as judge (G.S. 1949, 60-1602; 60-1603); the petition is an unwarranted interference with the administration of justice, it should be dismissed, and the temporary suspension hereinbefore issued should be vacated.

On June 29, 1959, plaintiff filed a motion for judgment on the pleadings for the reason that defendant's answer fails to raise any material issue of facts, presents only questions of law, and wholly fails to present any defense to the petition.

The office of judge of the court of common pleas of Wichita, Sedgwick County, was created by G.S. 1957 Supp. 20-2001, which in part provides:

> "Each such judge shall at the time of election be a qualified voter of the county in which such township is located and admitted to practice law before the supreme court of Kansas, and shall have been a practicing attorney for a period of at least five (5) years prior to said election or appointment."

Since plaintiff's motion for judgment on the pleadings reaches only the answer of the defendant by reason of our rule on such motions that the pleadings of the moving

party are to be disregarded, ignored, and not considered (*Walter* v. *Walter*, 185 Kan. 546, P. 2d) and since the only material issue of fact—that defendant's license to practice law in the state of Kansas was revoked and cancelled (*In re Stice*, 184 Kan. 589, 339 P. 2d 29)—is conceded, only one question of law remains to be determined and that is whether defendant's answer alleges a defense in view of this conceded fact. (*Dearborn Motors Credit Corporation* v. *Neel*, 184 Kan. 437, 337 P. 2d 992.)

Did the disbarment of defendant disqualify him to retain the position of judge of division No. 3 of the court of common pleas of Wichita Sedgwick County?

There is no dispute that if defendant had been disbarred prior to his election and his election had been challenged, he would have been ineligible to take such office. (G.S. 1957 Supp. 20-2001.)

Defendant discusses and relies on certain cases in our jurisdiction which control administrative offices, as well as one case concerning a district judge. (*Falloon* v. *Clark*, 61 Kan. 121, 58 Pac. 990.) We have no quarrel with the rules pronounced in those cases but they did not raise the question presently before us.

Each applicant who is admitted to the bar of this state must take on oath and sign the roll of attorneys in the office of the clerk of this court (G.S. 1949, 7-122; rule No. 41 of the supreme court) and each applicant thereby becomes an officer of the supreme court and of all inferior courts of this state. His conduct as an attorney is prescribed and regulated by the Canons of Professional Ethics (set out in 164 Kan. XI, et seq.) and discussed to some extent in *Wilson* v. *Wahl*, 182 Kan. 532, 322 P. 2d 804, where this court in substance stated that certain actions of an attorney constituted a violation of the spirit, if not the letter, of the Canons of Professional Ethics and the general rules laid down in the authorities cited therein. Comparison of these

Canons of Professional Ethics and the general rules laid Bar Association (1957) shows similarity. This court has frequently stated that courts generally have disciplinary jurisdiction over counsel appearing before them as such counsel are considered to be officers of the court and such disciplinary jurisdiction can be exercised not only for the purpose of enforcing legal rights but for the additional purpose of enforcing honorable conduct on the part of the court's own officers. (*In re Estate of Williams*, 160 Kan. 220, 225, 160 P. 2d 260.) As was stated in *Hanson v. Grattan*, 84 Kan. 843, 115 Pac. 646,

> "When an applicant is legally admitted to the practice of law, he becomes thereby an officer of the court for the term of his life or until he shall have been disbarred by the judgment of a court of competent jurisdiction." (Syl. 2.)

An attorney should always bear in mind that he is an officer of the court and as such he occupies a quasi-judicial position whose sanctions and traditions he should preserve. (*State v. Majors*, 182 Kan. 644, 648, 323 P. 2d 917.)

Throughout defendant's brief and argument he conveys the idea that it is more harsh and severe to disbar, and as a result to oust, a duly-elected, qualified and acting judge than to disbar an attorney when such disbarment results in the attorney being ousted as a quasi-judicial officer of the court. Such reasoning is neither logical nor legal.

Another facet of the question is, does G.S. 1957 Supp. 20-2001, by its terms, require that the judge retain his license and right to practice law in Kansas in order to continue to serve as judge of such court?

In *Clark v. Murray*, 141 Kan. 533, 41 P. 2d 1042 (which, under earlier statutory provisions, involved an action by a defeated incumbent judge against a successfully-elected

judge of the predecessor court to the one with which we are here concerned), this court said:

> "When the interpretation of a statute according to the exact and literal import of its words would thwart or contravene the manifest purpose of the legislature in its enactment, it should be construed according to its spirit and reason, disregarding, as far as may be necessary, the strict letter of the law." (Syl. 3.)

In *Hanson* v. *Cornell*, 136 Kan. 172, 12 P. 2d 802, an action in mandamus by Hanson to have his name as a candidate for judge of the ninth judicial district printed on the official primary election ballot and to have his name certified on the list of candidates of two of the county clerks of the judicial district, proper objections were filed before the state contest board based on the sole reason that while in 1897 plaintiff was admitted to the practice of law in this state, in 1916 he had been suspended from the right and privilege to practice law in all courts of this state pending further order of the court. In denying the writ of mandamus in the Hanson case, this court stated:

> "Obviously the legislature intended that for one to be qualified to hold office of judge of the district court, or of the supreme court of this state, his admission to practice law created a status which continued and under which he was engaged in the active and continuous practice of law up to the time of his election to such office." (p. 175.)

G.S. 1949, clearly defines the qualifications of judges of the district courts and justices of the supreme court.

We are not disposed presently to change our rule and say, as defendant seeks to have us say, that any or all of the qualifications required of a judge under G.S. 1957, 20-2001, apply only to the time of his election. The only reasonable conclusion is that every attorney who becomes a judge should continue to possess the right to practice law before the supreme court of Kansas to entitle and qualify

him to hold, and to continue in such judicial position. Any other conclusion would lead to an absurdity.

The same conclusion was reached by the supreme court of the state of Wisconsin in *State ex rel. Eugina* v. *Pierce*, 191 Wis. 1, 3, 209 N.W. 693, a quo warranto action filed against a county judge where the statute provided that no person was eligible to election or appointment to the office held by the defendant who, at the time of his election or appointment, was not an attorney of a court of record. The Wisconsin court there stated:

> "While this statute by its language provides that such qualification shall exist at the time of election or appointment, still there can be no question but that such qualification is a continuing one; that is, it must subsist during the entire term of office. A holding to the same effect as to residence was made in *State ex rel. Att'y Gen.* v. *Messmore*, 14 Wis. 163, 170, construing the provision of sec. 7, art. VII, Const., that 'every circuit judge shall reside in the circuit from which he elected.' This is so plainly a personal and continuing qualification of one entitled to be an incumbent of the office that a reasonable interpretation of the statute requires the conclusion that the existence of such qualification cannot be limited merely to the time of election or appointment, but must subsist at the time of taking office and during the continuation of such occupancy." (pp. 3, 4.)

In *State ex rel. Willis* v. *Monfort*, 93 Wash. 4, 159 Pac. 889, involving a candidate for superior court judge, the supreme court set out the portion of the state constitution (art. 4, 17) containing the provision that no person should be eligible to such office "unless he shall have been admitted to practice in the courts of record", and the court stated:

> "It is argued by the appellant that, because the constitutional provision uses the words, 'No person shall be eligible to the office of . . . judge of a superior court unless he *shall have been* admitted to practice in the courts of record of this this state,' it means that

every person who has heretofore been admitted to practice law in the courts of record of this state is eligible to the office of judge of the superior court, no matter what may occur thereafter. We think it would be absurd to say that this provision of the constitution means that, when a person has been admitted to practice in the courts of record of this state and subsequently he has been disbarred for cause or his admission vacated, he is still eligible to the office of superior judge by reason of his original status. The construction of this constitutional provision contended for by the appellant leads to that absurdity. When the constitution was framed and when it was adopted, it was clearly not the intention of the people in adopting it to authorize a person to be elected judge who was not, at the time of his election, entitled to practice as an attorney in the courts of record in the state. This provision of the constitution, in our opinion, defines a personal status which must continue, and when the status ceases to continue the person is ineligible. We think no other reasonable construction can be placed upon this provision." (pp. 5, 6.)

Examination of other contentions of defendant show they lack sufficient merit to require detailed discussion thereof. See *Foster* v. *Kansas*, 112 U.S. 201, 5 Sup. Ct. 8, 28 L. ed 629; *Taylor and Marshall* v. *Beckham* (No. 1), 178, U.S. 548, 20 Sup. Ct. 890, 44 L. Ed 1187; and see also, anno. 99 A.L.R. 336, 341.

We conclude that the defendant was disqualified by his disbarment to hold the particular judgeship here being considered because the requirement that he be admitted to the practice of law under G.S. 1957 Supp. 20-2001 was a continuing one at the time of his election and qualifying therefor and continued throughout the term for which he was elected. Plaintiff's motion for judgment on the pleadings should therefore be sustained and the writ granted.

Writ of quo warranto granted.